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AMY J HUNLEY
CLERK OF SUPERIOR COURT
BY _____
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA,

Plaintiff,

v.

SAMANTHA MARIE IRENE
CHILDS,

Defendant.

No. CR201900614/621

MOTION TO MODIFY
CONDITIONS OF RELEASE

(ORAL ARGUMENT REQUESTED)

(Hon. Laura Cardinal)

COMES NOW the Defendant, SAMANTHA MARIE IRENE CHILDS, by and through undersigned counsel, and hereby moves, pursuant to Rules 7.2 and 7.4, Arizona Rules of Criminal Procedure, for an order modifying the conditions of release to permit the Defendant's, release on her own recognizance, release to the third-party custody of Rachel Kacenga, or for a reduction in the amount of bond, as is more fully set forth in the accompanying Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

The Defendant, Samantha Marie Irene Childs, is currently being held in the Cochise County jail on a \$5,000.00 bond in each of three misdemeanor and two felony cases. A third felony case is in the process of being charged as well.

Samantha Marie Irene Childs, who is 33 years of age, will reside at the residence of Rachel Kacenga in Hereford, Arizona, and may be reached at (520) 210-1017. The Defendant has resided in Cochise County for many years. Under the circumstances, release or bond reduction appears appropriate.

LAW AND ARGUMENT

Rule 7.2(a), Arizona Rules of Criminal Procedure, requires the release of a non-capital Defendant pending trial, unless the Court finds that such release will not reasonably assure the person's appearance and standards of general safety. The Court should then place the "least onerous" conditions of release as set out in Rule 7.3(c) of the Ariz. R. Crim. P.

Moreover, it is the State's burden to establish that pre-trial release will not adequately assure a Defendant's presence. A hearing on a motion to modify is neither the time nor the place to litigate the allegations nor weigh the evidence. In fact, this rule establishes a presumption for release in all but capital cases, and requires the State to establish otherwise by a preponderance of the evidence (see, Rule 7.2 (d), Comment).

In this case, the State may argue that Ms. Childs is alleged to have missed a CARE Court hearing, but Ms. Childs has made numerous hearings in her various misdemeanor cases in efforts to have those charges dismissed in order to attempt to preserve her nursing license. Assuming *arguendo*, that Ms. Childs has missed a court hearing or two, the case is analogous to *State v. Khadijah* wherein an Appellate Court of Connecticut overturned a conviction of failing to appear in part because of the numerous hearings that the Defendant was obligated to attend. 909 A.2d 65, 66 (Conn. App. Ct. 2006). Samantha Marie Irene Childs will not fail to appear, as required, if released. She has a stable, supportive residence available through Rachel Kacenga, who has

assured Defense Counsel that she will provide transportation for future Court hearings. The purpose of any condition of release is to ensure that the accused appears at future court hearings, and to protect the victim, witnesses, and the community. Ariz.Const.art. II, § 22(b). In addition, Ariz.R.Crim.P. 7.2 states "any defendant charged with an offense bailable as a matter of right must be released pending and during trial on the defendant's own recognizance". Also, the court must remember that bail is constitutionally excessive when it is more than is necessary to ensure the accused's presence at future court appearances. Moreover, "[a] court may not set bail in an amount calculated to merely keep a defendant in jail or as a form of punishment." *Gusick v. Boies*, 72 Ariz. 233, 236-38, 233 P.2d 446, 448-49 (1951).

Ariz.R.Crim.P. 7.3(c) provides a list of additional conditions that may be imposed to ensure a person's attendance at future court hearings. A.R.S. § 13-3967(B) provides a non-exhaustive list of items that the Court should consider when imposing release conditions. In the situation at hand, the following considerations weigh in favor of the Defendant:

1. The nature and circumstances of the offense charged.
2. Whether the accused has a prior arrest or conviction for a serious, violent, or aggravated felony.
3. Evidence that the accused poses a danger to others in the community.
4. **Weight of Evidence Against the Accused.**
5. Accused's Family Ties, Employment, Financial Resources, Character and Mental Condition.
6. Accused's Prior Arrests and Convictions.
7. Accused's Record of Appearance at Court or of Flight to Avoid Prosecution or Failure to Appear at Court Proceedings
8. Whether the Accused has Entered or Remained Illegally in the United States.
9. Whether the Accused's Residence is in the State, Another State, or outside

of the United States.

A.R.S. 13-3967(B).

The Defendant, Ms. Childs, has no intention of fleeing the jurisdiction. She currently plans to engage in activities at Graceland. Ms. Childs was previously certified as a nurse and will hopefully continue to work in flooring and carpeting when she is released. This will contribute to the community and provide stability for Ms. Childs. There are no serious, aggravated, or violent felonies charged from Counsel's understanding of the indictments.

Ms. Childs also has three children whom she would like to support financially and socially. She wants to set a good example for them out in the community. Her father also recently suffered a couple of strokes and needs care and support that Ms. Childs can provide.

CONDITIONS OF CONFINEMENT

The conditions of confinement at the Sierra Vista Jail are not sufficient to avoid violation of 8th Amendment standards as announced by the 9th Circuit through various case law. Various violations of

"A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 113 S.Ct. 2475, 125 L.Ed.2d 22 (1993)); see also *Parsons v. Ryan*, 754 F.3d 657, 677 (9th Cir. 2014); *Graves v. Arpaio*, 623 F.3d 1043, 1049 (9th Cir. 2010); *Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995).

Cochise County has incarcerated the Defendant, Ms. Childs, in solitary confinement in violation of her 14th Amendment Due Process rights. 42 U.S.C. Sec. 1983; See also e.g. *Shorter v. Baca*, 895 F.3d 1176 (9th Cir. 2018); *Parsons v. Ryan*, 754 F.3d 657 (9th Cir. 2014) (later applying standards to ADOC in consent decree). This is also violative of her 8th amendment rights. *Id.*

Ms. Childs has requested that the jail provide a psychological evaluation because of her declining mental health condition. *Plata*, 563 U.S. at 503–04, 131 S.Ct. 1910 (noting that prisoners “with serious mental illness do not receive minimal, adequate care” when they spend “months in administrative segregation” with “harsh and isolated conditions” and “limited mental health services”).

Ms. Childs is currently reporting the beginnings of visual hallucination. She presents with increased anxiety and emotional lability when observed publicly by Defense Counsel around jail staff. Some level of this is likely permanent psychological damage and is quite expected as noted by scholars at the University of Mannheim. Shalev et al., A sourcebook on solitary confinement, (2008).

Ms. Childs has not had access to recreation, which can be an element of conditions violative of 8th Amendment minimums. *Shorter v. Baca*, 895 F.3d 1176, 1182 (9th Cir. 2018). She has not had access to sunlight. She has requested medical, but psychiatric services have not yet been provided. The light in her cell is connected to the main light, which cannot be turned off due to jail policy, so the light in her cell is on 24 hours a day.

It is conceded that Courts “unquestionably should be reluctant to second-guess prison administrators' opinions about the need for security measures.” *Block v.*

Rutherford, 468 U.S. at 593, 104 S.Ct. 3227 (Blackmun, J., concurring). The penological claim that Ms. Childs cannot have social recreation with a person socially unrelated to her because Ms. Childs recently worked as a nurse at the Bisbee Jail is an example of jail staff being "exaggerated in their response." *Id.* at 1183. In Navajo County it is common practice to allow two inmates out at a time for recreation in both maximum security and protective custody pods for all but the most difficult cases, or voluntary refusals. The absence of similar practices in this case and others points to a deliberate indifference and is generating substantial harm to the community in terms of increased recidivism and increased mental health treatment costs county wide. It is unnecessarily inhumane and should be avoided.

Release would be an appropriate remedy pursuant to 18 U.S.C. Sec. 3626(a). Furthermore, under A.R.S. § 13-3967(B), this Court may consider Ms. Child's mental condition in constructing appropriate release conditions.

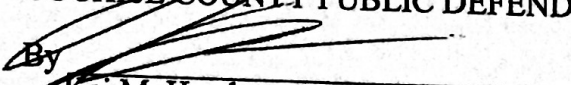
This case has a simple solution to a severe and systemic penological problem.

CONCLUSION

For the reasons cited above, it is requested that the Defendant's conditions of release be modified to permit release to the third party custody of Rachel Kacenga. In the alternative, it is requested that the bond be reduced to the lowest amount deemed realistically necessary to assure the Defendant's appearance.

RESPECTFULLY SUBMITTED this August 17th, 2019

MARK A. SUAGEE
COCHISE COUNTY PUBLIC DEFENDER

By 
Kai M. Henderson
Deputy Public Defender

Copy of the foregoing delivered this
19th day of, 2019 to: 19th day of August

Hon. Laura Cardinal
Judge of the Superior Court
Bisbee, AZ 85603
via inter-office mail

Terisha Driggs
Deputy County Attorney
Bisbee, AZ 85603
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